

Academic Abstention in the USA — List of Cases

Copyright 2011 by Ronald B. Standler

No copyright claimed for works of the U.S. Government.

No copyright claimed for quotations from any source, except for selection of such quotations.

Keywords

academic, abstain, abstention, autonomy, autonomous, college, court, defer, deference, diploma, education, interfere, judge, judicial, judiciary, professor, respect, respectful, student, university

Table of Contents

Introduction	2
U.S. Courts of Appeals	3
Connelly, 244 F.Supp. 156 (D.Vt. 1965)	10
State Supreme Courts	11
District of Columbia	12
Conclusion	13

Introduction

My previous essay on this subject, <http://www.rbs2.com/AcadAbst.pdf>, is a coherent essay with lengthy quotations from judicial opinions and a discussion of *why* courts abstain from reviewing academic decisions. In contrast, this document is only a collection of citations to appellate judicial opinions with a terse quotation from each opinion. Opinions of the U.S. Supreme Court are quoted in my previous essay.

The cases cited here include *both* student vs. university *and* professor vs. university disputes, involving:

suspension/expulsion of students for either academic or disciplinary reasons,

- grading disputes,
- denial of tenure to faculty,
- dismissal of residents from medical training programs,
- accrediting disputes,
- accommodations for disabilities,
- educational malpractice cases, etc.

All of these cases share a common theme that the judges showed great deference to the decisions of the educators. In the cases of accrediting disputes, the judges commonly showed great deference to the decisions of the accrediting association.

After spending about 24 hours of my unpaid time searching Westlaw databases and editing this document, my interest began to wane. I marked this version “preliminary draft” at the bottom of each page and posted it at my website, in the hope that this list of citations will be useful, although this list is not complete.

disclaimer

This essay presents general information about an interesting topic in law, but is *not* legal advice for your specific problem. See my disclaimer at <http://www.rbs2.com/disclaim.htm>. From reading e-mail sent to me by readers of my essays since 1998, I am aware that readers often use my essays as a source of free legal advice on their personal problem. Such use is *not* appropriate, for reasons given at <http://www.rbs2.com/advice.htm>.

Sometimes I deleted the citation(s) at the end of the quoted sentence or two. Of course, one should read the case before citing it. I did not check for appeals to the U.S. Supreme Court.

I list the cases in chronological order in this essay, so the reader can easily follow the historical development of a national phenomenon. If I were writing a legal brief, then I would use the conventional citation order given in the *Bluebook*.

U.S. Courts of Appeals

I searched only for opinions published in the FEDERAL reporter. I harvested the first group of citations in this section with searches of Westlaw databases on 9 April 2011 for the query:
(court judge judicia!) /s (autonom! defer! interfer! respectful!)
/s (academic college university)
I have also added cases that I found with other searches.

- *Gaspar v. Bruton*, 513 F.2d 843, 850 (10thCir. 1975) (“Courts have historically refrained from interfering with the authority vested in school officials to drop a student from the rolls for failure to attain or maintain prescribed scholastic rating (whether judged by objective and/or subjective standards), absent a clear showing that the officials have acted arbitrarily or have abused the discretionary authority vested in them.”);
- *Greenhill v. Bailey*, 519 F.2d 5, 7 and 10, n.12 (8thCir. 1975) ([at p. 7:] “It is true that courts will ordinarily defer to the broad discretion vested in public school officials and will rarely review an educational institution's evaluation of the academic performance of its students. [citing five cases]” [at p.10, n.12:] “For a court to overturn a student's dismissal on substantive grounds it must find that such dismissal was arbitrary and capricious. Only the most compelling evidence of arbitrary or capricious conduct would warrant our interference with the performance evaluation (grades) of a dismissed student made by his teachers.”);
- *Megill v. Board of Regents of Florida*, 541 F.2d 1073, 1077 (5thCir. 1976) (“This Court does not sit as a reviewing body of the correctness or incorrectness of the Board of Regents’ decision in granting or withholding tenure. This is founded on the policy that federal courts should be loathe to intrude into internal school affairs. [two citations omitted]”);
- *Navato v. Sletten*, 560 F.2d 340, 345 (8thCir. 1977) (“It is true that the courts have traditionally accorded great deference to academic evaluations. See *Greenhill v. Bailey*, 519 F.2d 5, 7 (8thCir. 1975), and cases cited therein. School officials have a strong interest in freedom from outside intervention in matters of academic evaluation in order to maintain the integrity of the academic process.”);
- *Gabrilowitz v. Newman*, 582 F.2d 100, 103 (1stCir. 1978) (“Judicial deference to academic autonomy is not a before-the-fact policy. Rather, it emerges from a balancing of the interests of the parties.”);

- *Davis v. Weidner*, 596 F.2d 726, 731 (7thCir. 1979) (In review of a terminated nontenured professor's employment for alleged gender discrimination, “judicial deference is legitimate only to the extent it is based on a desire to avoid replacing a university’s judgments about academic employment with judgments made by the judiciary.”);
- *Kunda v. Muhlenberg College*, 621 F.2d 532, 548 (3dCir. 1980) (“... it is clear that courts must be vigilant not to intrude into that determination [of faculty employment], and should not substitute their judgment for that of the college with respect to the qualifications of faculty members for promotion and tenure. Determinations about such matters as teaching ability, research scholarship, and professional stature are subjective, and unless they can be shown to have been used as the mechanism to obscure discrimination, they must be left for evaluation by the professionals, particularly since they often involve inquiry into aspects of arcane scholarship beyond the competence of individual judges.”);
- *Doe v. New York Univ.*, 666 F.2d 761, 776 (2dCir. 1981) (“ ‘Courts are particularly ill-equipped to evaluate academic performance,’ *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 956, 55 L.Ed.2d 124 (1978). For this reason, although the Act requires us rather than the institution to make the final determination of whether a handicapped individual is ‘otherwise qualified,’ [citation deleted] considerable judicial deference must be paid to the evaluation made by the institution itself, absent proof that its standards and its application of them serve no purpose other than to deny an education to handicapped persons.”)
- *Hines v. Rinker*, 667 F.2d 699, 703 (8thCir. 1981) (“However, even if such a cause of action does exist, plaintiffs would have to show arbitrary and capricious conduct on the part of university officials. *Board of Curators v. Horowitz*, supra, 435 U.S. at 91, 98, 98 S.Ct. at 955, 959. [¶] To establish such arbitrary and capricious action, the plaintiff must show that there is no rational basis for the university’s decision, *Greenhill v. Bailey*, supra, 519 F.2d at 10 n.12, or that the decision to dismiss was motivated by bad faith or ill will unrelated to academic performance. *Gaspar v. Bruton*, 513 F.2d 843, 845 (10thCir. 1975).”);
- *Brookhart v. Illinois State Board of Education*, 697 F.2d 179, 182 (7thCir. 1983) (“We note at the outset that in analyzing these claims deference is due the School District's educational and curricular decisions. [citing two cases] The School District's desire to ensure the value of its diploma by requiring graduating students to attain minimal skills is admirable, and the courts will interfere with educational policy decisions only when necessary to protect individual statutory or constitutional rights.”);

- *Jones v. Board of Governors of University of North Carolina*, 704 F.2d 713, 715 (4thCir. 1983) (“... we emphasize at the outset our understanding that federal courts must accord great deference to the administration of those [academic disciplinary] procedures by state educational institutions.”);
- *Ikpeazu v. University of Nebraska*, 775 F.2d 250, 253 (8thCir. 1985) (per curiam) (“An actionable deprivation in an academic dismissal case is proved only if there was no rational basis for the university’s decision, or if the decision was motivated by bad faith or ill will unrelated to academic performance. [citing four cases]”);
- *Haberle v. University of Alabama in Birmingham*, 803 F.2d 1536, 1541 (11thCir. 1986) (“The comprehensive exam is a prerequisite to the doctorate. Mr. Haberle failed the exam. There is no dispute about that. Therefore, he is not entitled to continue to pursue the doctorate. There is nothing arbitrary about such a requirement. The courts should not interfere with this academic decision.”);
- *Clements v. Nassau County*, 835 F.2d 1000, 1004 (2dCir. 1987) (“In cases involving academic dismissal, educational institutions have the right to receive summary judgment unless there is evidence from which a jury could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance. *Ikpeazu v. University of Nebraska*, 775 F.2d 250, 253 (8thCir. 1985) (per curiam).”);
- *Doherty v. Southern College of Optometry*, 862 F.2d 570, 576-577 (6thCir. 1988) (“... we note that this case arises in an academic context where judicial intervention in any form should be undertaken only with the greatest reluctance. [citing *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 226 (1985)] The federal judiciary is ill equipped to evaluate the proper emphasis and content of a school's curriculum. [citing *Board of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 89-91 (1978)] ... Although the relationship may be analyzed as a contractual one, courts have adopted different standards of review when educators' decisions are based upon disciplinary versus academic criteria — applying a more intrusive analysis of the former and a far more deferential examination of the latter.”)
- *Parate v. Isibor*, 868 F.2d 821, 827 (6thCir. 1989) (“The university may dismiss a nontenured professor for any reason, or no reason, and the professor has no recourse unless such dismissal abridges his exercise of a constitutionally protected right. See, e.g., *Perry v. Sinderman*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Blair v. Board of Regents*, 496 F.2d 322 (6th Cir. 1974); *Orr v. Trinter*, 444 F.2d 128 (6th Cir. 1971), cert. denied, 408 U.S. 943, 92 S.Ct. 2847, 33 L.Ed.2d 767 (1972). In addition, because the university must remain independent and autonomous to enjoy academic freedom, the federal courts are reluctant to interfere in the internal operations of the academy. Cf. *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968) (“Courts do not and cannot intervene

in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.’.”);

- *Alabama Student Party v. Student Government Association of the University of Alabama*, 867 F.2d 1344, 1347 (11thCir. 1989) (“The University judgment on matters such as this should be given great deference by federal courts.”).¹
- *Russell v. Salve Regina College*, 890 F.2d 484, 489 (1stCir. 1989) (“There can be no doubt that courts should be slow to intrude into the sensitive area of the student-college relationship, especially in matters of curriculum and discipline. *Slaughter v. Brigham Young Univ.*, 514 F.2d 622] at 627 [(10thCir. 1975), *cert. denied*, 423 U.S. 898 (1975)] (‘substantial performance’ standard is intolerable when it allows student to get away with ‘a little dishonesty’.”), *rev’d on other grounds*, 499 U.S. 225 (1991), *reinstated on remand*, 938 F.2d 315 (1stCir. 1991).
- *Brown v. Trustees of Boston University*, 891 F.2d 337, 346 (1stCir. 1989) (“In tenure cases, courts must take special care to preserve the University’s autonomy in making lawful tenure decisions.”);²
- *Texas Faculty Ass’n v. University of Texas at Dallas*, 946 F.2d 379, 386 (5thCir. 1991) (“The *Horowitz* Court [435 U.S. at 88-89] paid even greater deference to local decision makers, holding that students dismissed for academic deficiency need be accorded no hearing at all.”);
- *Ross v. Creighton University*, 957 F.2d 410, 414-415 (7thCir. 1992) (Collecting cases and reasons why courts have declined to recognize the tort of educational malpractice. “This oversight might be particularly troubling in the university setting where it necessarily implicates considerations of academic freedom and autonomy. *Moore*, 386 N.W.2d at 115 [(Iowa 1986)].”);
- *Williams v. Texas Tech. University Health Sciences Center*, 6 F.3d 290, 294 (5thCir. 1993) (“Judicial evaluation of academic decisions requires deference and they are overturned only if they are ‘such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.’ *Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 513, 88 L.Ed.2d 523 (1985).”);

¹ Quoted with approval by *Bishop v. Aronov*, 926 F.2d 1066, 1075 (11thCir. 1991).

² Quoted with approval in *Jackson v. Harvard University*, 900 F.2d 464, 467 (1stCir. 1990); *Lawrence v. Curators of University of Missouri*, 204 F.3d 807, 809 (8thCir. 2000).

- *Osteen v. Henley*, 13 F.3d 221, 225-226 (7thCir. 1993) (Posner, J.) (“We are reluctant to encourage further bureaucratization by judicializing university disciplinary proceedings, mindful also that one dimension of academic freedom is the right of academic institutions to operate free of heavy-handed governmental, including judicial, interference.”);
- *Kobrin v. University of Minnesota*, 34 F.3d 698, 704, n.4 (8thCir. 1994) (“... we note that courts accord a high degree of deference to the judgment of university decisionmakers regarding candidates' qualifications for academic positions.”);³
- *Settle v. Dickson County School Board*, 53 F.3d 152, 155 (6thCir. 1995) (“So long as the teacher limits speech or grades speech in the classroom in the name of learning and not as a pretext for punishing the student for her race, gender, economic class, religion or political persuasion, the federal courts should not interfere.”);
- *Jiminez v. Mary Washington College*, 57 F.3d 369, 376 (4thCir. 1995) (“We commence with the premise that while Title VII is available to aggrieved professors, we review professorial employment decisions with great trepidation. [citing four cases] We must be ever vigilant in observing that we do not “sit as a ‘super personnel council’ to review tenure decisions,” *Brousard-Norcross*, 935 F.2d at 976 [(8thCir. 1991)], always cognizant of the fact that professorial appointments necessarily involve “subjective and scholarly judgments,” with which we have been reluctant to interfere, *Smith v. University of North Carolina*, 632 F.2d 316, 345-47 (4thCir. 1980).”)
- *Mangla v. Brown University*, 135 F.3d 80, 84 (1stCir. 1998) (“Courts have long recognized that matters of academic judgment are generally better left to the educational institutions than to the judiciary and have accorded great deference where such matters are at issue.”);
- *Kaltenberger v. Ohio College of Podiatric Medicine*, 162 F.3d 432, 436 (6thCir. 1998) (“ ‘University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.’ [Ewing, 474 U.S.] at 225 n. 11, 106 S.Ct. 507 (quoting *Board of Curators, Univ. of Mo. v. Horowitz*, 435 U.S. 78, 96 n. 6, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978) (Powell, J., concurring)). Courts must also give deference to professional academic judgments when evaluating the reasonable accommodation requirement.”);
- *Zukle v. Regents of University of California*, 166 F.3d 1041, 1047 (9thCir. 1999) (“While the Court made this statement [quoting *Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214, 225 (1985)] in the context of a due process violation claim, a majority of circuits have extended judicial deference to an educational institution's academic decisions in ADA and

³ Quoted with approval in *Kobrin v. University of Minnesota*, 121 F.3d 408, 414 (8thCir. 1997).

Rehabilitation Act cases. See *Doe v. New York Univ.*, 666 F.2d 761 (2d.Cir. 1981); *McGregor v. Louisiana State Univ. Bd. of Supervisors*, 3 F.3d 850 (5thCir. 1993); *Wynne v. Tufts Univ. Sch. of Med.* (“Wynne I”), 932 F.2d 19 (1st.Cir. 1991).”);

- *Wong v. Regents of University of California*, 192 F.3d 807, 817 (9thCir. 1999) (“We recently observed that the Supreme Court, in the context of examining whether a university violated a student’s constitutional rights to due process when it dismissed him, has held that judges “should show great respect for [a] faculty’s professional judgment” when reviewing “the substance of a genuinely academic decision.” *Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 513, 88 L.Ed.2d 523 (1985), quoted in *Zukle*, 166 F.3d at 1047. Extending this reasoning to the realm of the ADA and Rehabilitation Act, we concluded, as most other circuits have, “that an educational institution’s academic decisions are entitled to deference.” *Zukle*, 166 F.3d at 1047 (citing with approval cases from the First, Second, and Fifth Circuits). We typically defer to the judgment of academics because courts generally are “ill-equipped,” as compared with experienced educators, to determine whether a student meets a university’s “reasonable standards for academic and professional achievement.” *Id.* (internal quotations omitted).”);
- *Foundation for Interior Design Education Research v. Savannah College of Art & Design*, 244 F.3d 521, 528 (6thCir. 2001) (“In subsequent cases [after *Marjorie Webster Junior Coll., Inc. v. Middle States Assoc. of Colls. & Secondary Sch., Inc.*, 432 F.2d 650 (D.C.Cir. 1970)] reviewing school accreditation decisions, courts have held that such decisions are accorded “great deference” and have “consistently limited their review ... to whether the decisions were ‘arbitrary and unreasonable’ and whether they were supported by ‘substantial evidence.’ ” *Wilfred Acad. of Hair & Beauty Culture*, 957 F.2d at 214 (citing *Medical Inst. of Minnesota*, 817 F.2d at 1314; *Marjorie Webster Junior Coll., Inc.*, 432 F.2d at 657; *Rockland Inst.*, 412 F.Supp. at 1016; *Parsons Coll.*, 271 F.Supp. at 73); see also, *Chicago Sch. of Automatic Transmissions, Inc.*, 44 F.3d at 449-50; *Transport Careers, Inc.*, 646 F.Supp. at 1480-81.”);
- *Ambrose v. New England Association of Schools and Colleges, Inc.*, 252 F.3d 488, 498-499 (1stCir. 2001) (“Even so, reviewing courts invariably have afforded the accrediting agency’s determination great deference. [citing five cases]”);
- *Davis v. University of North Carolina*, 263 F.3d 95, 102 (4thCir. 2001) (“And because “[c]ourts are particularly ill-equipped to evaluate academic performance,” *Board of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978), we generally accord great deference to a school’s determination of the qualifications of a hopeful student, see *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985) (“When judges are asked to review the substance of a genuinely academic decision, ... they should show great respect for the faculty’s professional judgment.”); accord *Zukle v. Regents of the Univ. of California*, 166 F.3d 1041, 1047 (9thCir. 1999); *Wynne v. Tufts Univ. Sch. of Med.*, 932 F.2d 19, 25 (1stCir. 1991).”);

- *Omosegbon v. Wells*, 335 F.3d 668, 676 (7thCir. 2003) (Wood, J.) (“Further, we have repeatedly noted that ‘one dimension of academic freedom is the right of academic institutions to operate free of heavy-handed governmental, including judicial, interference.’ *Osteen v. Henley*, 13 F.3d 221, 225-26 (7thCir. 1993); see also”);
- *Powell v. National Board of Medical Examiners*, 364 F.3d 79, 88 (2dCir. 2004) (“When reviewing the substance of a genuinely academic decision, courts should accord the faculty’s professional judgment great deference. See *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985).”);
- *Falcone v. University of Minnesota*, 388 F.3d 656, 659 (8thCir. 2004) (“[Plaintiff] presented no evidence that this explanation was pretextual, or that the University’s decision was a bad faith exercise of its virtually unrestricted discretion to evaluate academic performance. [citing *Horowitz* 435 U.S. at 95 (Powell, J., concurring)]”);
- *Hosty v. Carter*, 412 F.3d 731, 736 (7thCir. 2005) (en banc) (Easterbrook, J. for majority) (“Let us not forget that academic freedom includes the authority of the university to manage an academic community and evaluate teaching and scholarship free from interference by other units of government, including the courts.”);
- *Brandt v. Board of Educ. of City of Chicago*, 480 F.3d 460, 467 (7thCir. 2007) (Posner, J. for majority) (“Academic freedom, ‘a special concern of the First Amendment.’ *Keyishian v. Board of Regents*, 385 U.S. 589, 602, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967), is not just the freedom of teachers, school authorities, and to an extent students to express ideas and opinions. ‘It includes the authority of the university to manage an academic community and evaluate teaching and scholarship free from interference by other units of government, including the courts.’ *Hosty v. Carter*, 412 F.3d 731, 736 (7thCir. 2005) (en banc);....”);
- *Asociacion de Educacion Privada de Puerto Rico, Inc. v. Garcia-Padilla*, 490 F.3d 1, 15, n.10 (1stCir. 2007) (“The concern regarding institutional competence in government interference with academia is supported by the judiciary’s longstanding reluctance to meddle with the discretion of academics, either on substantive or procedural grounds, when they make bona fide academic decisions. [citing *Michigan v. Ewing*, 474 U.S. at 226.]”);
- *Rodriguez v. Maricopa County Community College Dist.*, 605 F.3d 703, 709 (9thCir. 2010) (“To afford academic speech the breathing room that it requires, courts must defer to colleges’ decisions to err on the side of academic freedom.”);

- *Fisher v. University of Texas at Austin*, 631 F.3d 213, 231 (5thCir. 2011) (“Judicial deference to a university’s academic decisions rests on two independent foundations. First, these decisions are a product of ‘complex educational judgments in an area that lies primarily within the expertise of the university,’ far outside the experience of the courts.[*Grutter v. Bollinger*, 539 U.S. 306, 328 (U.S. 2003).] Second, ‘universities occupy a special niche in our constitutional tradition,’ with educational autonomy grounded in the First Amendment. [*Grutter*, 539 U.S. at 329 (citing cases)]”).

***Connelly*, 244 F.Supp. 156 (D.Vt. 1965)**

In 1965, a former medical student at the University of Vermont sued in U.S. District Court for reinstatement to medical school. The U.S. District Court wrote a good explanation of what is now known as academic abstention, which explanation has been accepted by many state courts:

It has been said that courts do not interfere with the management of a school’s internal affairs unless ‘there has been a manifest abuse of discretion or where (the school officials’) action has been arbitrary or unlawful,’ *State ex rel. Sherman v. Hyman*, 180 Tenn. 99, 171 S.W.2d 822, cert.den. 319 U.S. 748, 63 S.Ct. 1158, 87 L.Ed. 1703 (1942), or unless the school authorities have acted ‘arbitrarily or capriciously’, *Frank v. Marquette University*, 209 Wis. 372, 245 N.W. 125 (1932), or unless they have abused their discretion, *Coffelt v. Nicholson*, 224 Ark. 176, 272 S.W.2d 309 (1954), *People ex rel. Bluett v. Board of Trustees of University of Illinois*, 10 Ill.App.2d 207, 134 N.E.2d 635, 58 A.L.R.2d 899 (1956), or acted in ‘bad faith’, *Barnard v. Inhabitants of Shelburne*, supra, 216 Mass. 19, 102 N.E. 1095, and see 222 Mass. 76, 109 N.E. 818 (same case).

The effect of these decisions is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student of showing that his dismissal was motivated by arbitrariness, capriciousness or bad faith.⁴ The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school faculty’s freedom from interference from other noneducational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student.

....

The rule of judicial nonintervention in scholastic affairs is particularly applicable in the case of a medical school. A medical school must be the judge of the qualifications of its students to be granted a degree; [“]Courts are not supposed to be learned in medicine and are not qualified to pass [an] opinion as to the attainments of a student in medicine.[”] *People ex rel. Pacella v. Bennett Medical College*, 205 Ill.App. 324 [(Ill.App. 1917)]
Connelly v. University of Vermont, 244 F.Supp. 156, 159-161 (D.Vt. 1965). Quoted with approval in *Mustell v. Rose*, 211 So.2d 489, 493 (Ala. 1968) (quoting all three paragraphs); *Militana v. Univ. of Miami*, 236 So.2d 162, 164 (Fla.App. 1970) (quoting middle paragraph);

⁴ Boldface added by Standler.

Wong v. Regents of Univ. of California, 93 Cal.Rptr. 502, 506-507 (Cal.App. 1971) (quoting all three paragraphs); *Johnson v. Sullivan*, 571 P.2d 798, 801 (Mont. 1977) (quoting middle paragraph); *Burch v. Moulton*, 980 So.2d 392, 398 (Ala. 2007) (quoting first two paragraphs). In practice, it is almost impossible for the grieved student to prove in court that the faculty made an arbitrary or capricious decision.

State Supreme Courts

I harvested the citations in this document with searches of Westlaw databases on 10 April 2011 for the query:

```
(court judge judicia!) /s (autonom! defer! interfer!) /s
(academic college university)
```

I have also added cases that I found with other searches.

- *Donohue v. Copiague Union Free School Dist.*, 391 N.E.2d 1352, 1354 (N.Y. 1979) (“To entertain a cause of action for ‘educational malpractice’ would require the courts not merely to make judgments as to the validity of broad educational policies a course we have unalteringly eschewed in the past but, more importantly, to sit in review of the day-to-day implementation of these policies. Recognition in the courts of this cause of action would constitute blatant interference with the responsibility for the administration of the public school system lodged by Constitution and statute in school administrative agencies.”);
- *Waliga v. Board of Trustees of Kent State University*, 488 N.E.2d 850, 852-853 (Ohio 1986) (“Modern courts have also traditionally refused to interfere with fundamental university functions, such as the granting and withdrawing of academic degrees, except to require that good cause be shown and that a fair hearing procedure be made available. [citing 4 cases]”);
- *Smith v. Denton*, 895 S.W.2d 550, 553-554 (Ark. 1995) (“A chancery court has no power to interfere in the exercise of a state-supported university’s discretion in the promulgation and implementation of disciplinary measures unless it is shown by clear and convincing evidence that the university abused its discretion. [citing 3 cases]”);
- *Gupta v. New Britain General Hospital*, 687 A.2d 111, 120 (Conn. 1996) (“As with the plaintiff’s claim of deficiencies in his hospital training, we approach with caution, and with deference to academic decisionmaking, the plaintiff’s challenge to the motivation of the hospital in terminating his residency.”);
- *Hernandez v. Overlook Hosp.*, 692 A.2d 971, 975 (N.J. 1997) (“In consideration of the academic context of the decision, the court deferred to the University’s expertise in the academic area. [*Ross v. University of Minnesota*, 439 N.W.2d 28, 33 (Minn.App. 1989)]” [¶] “Assessing a student’s academic performance must be left to the sound judgment of the individual academic institution. See *In re University of Med. & Dent.*, supra, 144 N.J. at 536,

677 A.2d 721. The process of rendering an academic decision frequently involves a subjective assessment of a student's ability to meet curriculum standards. Those evaluations should be conducted in an academic, rather than a legal, environment because such decisions do not lend themselves to the traditional fact-finding process of civil litigation.”);

- *Schaer v. Brandeis University*, 735 N.E.2d 373, 381 (Mass. 2000) (“We adhere to the principle that ‘[c]ourts are chary about interfering with academic and disciplinary decisions made by private colleges and universities.’ *Schaer v. Brandeis Univ.*, supra at 26, 716 N.E.2d 1055, citing *Russell v. Salve Regina College*, 890 F.2d 484, 489 (1stCir. 1989), *rev’d on other grounds*, 499 U.S. 225, 111 S.Ct. 1217, 113 L.Ed.2d 190, *reinstated on remand*, 938 F.2d 315 (1stCir. 1991).”);
- *Bhatt v. University of Vermont*, 958 A.2d 637, 642 (Vt. 2008) (“... we recognize that we are dealing with the decisions of an academic institution about the ethical and academic standards applicable to its students. We accord deference to the academic institution in making these judgments. See *Falcone v. Univ. of Minn.*, 388 F.3d 656, 659 (8thCir. 2004) (university has ‘virtually unrestricted discretion to evaluate academic performance’); *Mershon*, 442 F.3d at 1078; *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1047-48 (9thCir. 1999); see generally *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 n. 11, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985) (‘University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.’ (quoting *Board of Curators v. Horowitz*, 435 U.S. 78, 96 n. 6, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978) (Powell, J., concurring))).”).

District of Columbia

Westlaw considers the District of Columbia Court of Appeals (*not* the U.S. Court of Appeals for the District of Columbia) to be equivalent to a state supreme court. For unknown reasons, there are a large number of academic abstention cases in that one court. See, e.g.,

- *Alden v. Georgetown University*, 734 A.2d 1103, 1108 (D.C. 1999) (“This court has recognized that a judgment by school officials that a student has not performed adequately to meet the school's academic standards is a determination that usually calls for judicial deference. [citing two cases]”);
- *Jung v. George Washington University*, 875 A.2d 95, 108 (D.C. 2005) (“ ‘Only the most compelling evidence of arbitrary or capricious conduct would warrant interference with the performance evaluation (grades) of a ... student made by his teachers.’ *Greenhill v. Bailey*, 519 F.2d 5, 10, n. 12 (8thCir. 1975).”);

- *Allworth v. Howard University*, 890 A.2d 194, 202 (D.C. 2006) ("We apply these legal principles in the university context where concepts of academic freedom and academic judgment are so important that courts generally give deference to the discretion exercised by university officials. As we reiterated in *Brown v. George Washington Univ.*, 802 A.2d 382 (D.C. 2002), “ ‘courts should not invade, and only rarely assume academic oversight, except with the greatest caution and restraint, in such sensitive areas as faculty appointment, promotion, and tenure, especially in institutions of higher learning.’ ” *Id.* at 385. ");
- *Varner v. District of Columbia*, 891 A.2d 260, 270 (D.C. 2006) ("Finally, the disciplining of students by universities is an area in which we are obliged to tread carefully and exercise restraint. “Courts must enter the realm of school discipline with caution and allow schools flexibility in establishing and enforcing disciplinary procedures.” *Harwood v. Johns Hopkins Univ.*, 130 Md.App. 476, 747 A.2d 205, 209 (2000) (citations omitted). Just as “[p]ublic policy considerations undergird the deference accorded [an] academic institution in grading its students,” *Jung v. George Washington Univ.*, 875 A.2d 95, 108 (D.C. 2005), so too courts must respect the authority of a university to select the appropriate discipline to be meted out to a student who has violated the university's rules.");
- *Manago v. District of Columbia*, 934 A.2d 925, 926 (D.C. 2007) (“ ‘This court has recognized that a judgment by school officials that a student has not performed adequately to meet the school’s academic standards is a determination that usually calls for judicial deference.’ *Alden v. Georgetown University*, 734 A.2d 1103, 1108 (D.C. 1999). ‘This rule of judicial nonintervention is particularly appropriate in the health care field where the students who receive degrees will provide care to the public....’ *Id.* at 1109 (internal quotation marks and citations omitted).”);

Conclusion

This long list of citations shows that both state and federal courts show great deference to decisions of professors in academic matters, such as evaluating a student or deciding tenure for a colleague.

This document is at www.rbs2.com/AcadAbst2.pdf

My most recent search for court cases on this topic was in April 2011
created 8 April 2011, first posted 25 April 2011, revised 25 Apr 2011

return to my homepage at <http://www.rbs2.com/>